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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,537	07/28/2003	Donald L. Groeschner	03141-P0451A	3582
24126	7590	06/09/2004	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			PRUCHNIC, STANLEY J	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/628,537	GROESCHNER, DONALD L.	
	Examiner Stanley J. Pruchnic, Jr.	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) 1-12 is/are allowed.
- 6) Claim(s) 13-15, 17-21 and 23-25 is/are rejected.
- 7) Claim(s) 16, 22 and 26 is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 July 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date rcvd 12 March 2004.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____.

DETAILED ACTION

Information Disclosure Statement

1. The references listed in the information disclosure statement (IDS) or PTO-1449 submitted by Applicant on 12 March 2004 are acknowledged. The cited references have been considered as indicated by the examiner's initials next to each reference considered.

However the foreign patent(s) and/or document(s) cited by applicant are considered only to the extent they could be understood from the English language abstract.

Claim Objections

2. Claims 14-20 and 26-30 are objected to because of the following informalities:
 - In each of Claims 14-20, "holder" lacks antecedent basis. It is considered that Applicant intends "holder" to be --housing-- in each of these claims.
 - In Claim 19, in Line 1, perhaps the claim number "1" after the word "**Claim**" should be deleted and replaced therefor by the claim number --13-- in order to more clearly describe the invention, correcting an obvious typographical error, since otherwise, this claim is a duplicate of Claim 9.
 - In Claim 20, in Line 1, perhaps the claim number "1" after the word "**Claim**" should be deleted and replaced therefor by the claim number --13-- in order to more clearly describe the invention, correcting an obvious typographical error, since otherwise, this claim is a duplicate of Claim 10.
 - In Claim 26, in Line 16, perhaps the word "**first**" before "**winding**" should be deleted and replaced therefor by the word --**second**-- in order to more clearly describe the invention.
 - Claims 27-30 are objected to only in that they depend from Claim 26, so include the objected to feature by virtue of their dependency.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 13-15, 20-21 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Norem *et al.* (U.S. Patent No. 3,732,722, hereinafter **NOREM**).

Regarding Claims 13-15 and 20:

Regarding Claim 13: NOREM discloses a housing 10 for a material holder, said housing comprising:

an intermediate housing member comprising a generally horizontal member 92, an upper recess and a lower recess;

an upper housing member comprising a generally horizontal member 64 and a wall 62 defining a material holding chamber (cup 12), the upper housing member being seated within the upper recess of the intermediate housing member;

a lower housing member comprising a generally horizontal member 94, the lower housing member being seated within the lower recess of the intermediate housing member;

wherein the upper recess, the generally horizontal member 92 of the intermediate housing member and the generally horizontal member 64 of the upper housing member define a first cavity adapted to receive a first winding assembly (first winding 72 between alumina cloths 66 and 74);

wherein the lower recess, the generally horizontal member 92 of the intermediate housing member and the generally horizontal member 94 of the lower housing member define a second cavity adapted to receive a second winding assembly (second winding 86 between alumina cloths 88 and 90).

Wherein, in each case as described above, the respective upper and lower "recesses" are considered to be the gaps filled by the first and second winding assemblies plus the respective upper (64) and lower (94) generally horizontal members (64, 94).

Further regarding Claims 14-15: NOREM discloses the respective upper and lower housing member has an outer diameter which is generally equal to or slightly larger than a diameter of a portion of the upper (lower) recess as claimed by Applicant.

Further regarding Claim 20: NOREM discloses the holder as claimed by Applicant wherein the upper housing member, the intermediate housing member and the lower housing member are formed from an alloy comprising about 80% platinum and about 20% iridium (Col. 3, Lines 39-50 and Col. 4, Lines 24-25).

Regarding Claims 21 and 23-25:

Regarding Claim 21: NOREM discloses a holder 10 for materials for use in a measuring instrument, as claimed by Applicant, said holder comprising:

a three-piece housing consisting of an upper housing member 64, an intermediate housing member 92 and a lower housing member 94, the three-piece housing defining a first cavity and a second cavity;

a first winding assembly (first winding 72 between alumina cloths 66 and 74) disposed within the first cavity; and

a second winding assembly (second winding 86 between alumina cloths 88 and 90) disposed within the second cavity. In both cases, the respective "cavities" are considered to be the cavities (*i.e.*, recesses or spaces) filled by the first and second winding assemblies as described above.

Further regarding Claim 23: NOREM discloses the holder as claimed by Applicant wherein the upper housing member, the intermediate housing member and the lower housing member are formed from an alloy comprising about 80% platinum and about 20% iridium (Col. 3, Lines 39-50 and Col. 4, Lines 24-25).

Further regarding Claim 24: NOREM discloses the holder as claimed by Applicant wherein one of the first winding or the second winding comprises a heating winding 86 and the other of the first winding or the second winding comprises a heat-sensing winding 72.

Further regarding Claim 25: NOREM discloses the holder as claimed by Applicant further comprising a center post 16 and a washer member 56 attached (Col. 2, Lines 36-42) to the lower housing member 94.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norem *et al.* (U.S. Patent No. 3,732,722, hereinafter **NOREM**) in view of Bullinger *et al.* (U.S. Patent No. 4,330,933, hereinafter **BULLINGER**).

7. **NOREM** discloses or suggests all the limitations of a housing for a material holder as claimed by Applicant in Claims 17-19, including the limitations of Claims 13-15 and 20 as described above in Paragraph 4.

NOREM, to summarize, is shown to teach all of the limitations as claimed by Applicant, with the exception of the limitations (1) wherein the upper recess of the intermediate housing member has a beveled upper edge; (2) wherein the lower recess of the intermediate housing member has a beveled lower edge; and (3) an inner surface of the wall of the upper housing member includes a shoulder therein which is adapted to receive and support a cover.

Regarding Claims 17 and 18:

BULLINGER discloses that it is known in the art to provide a housing for a material holder with a beveled upper edge (See Fig. 2).

BULLINGER is evidence that ordinary workers in the field of sample holder making would recognize the benefit of using a beveled upper edge as taught by **BULLINGER** for the straight edge of **NOREM** in order to more easily insert disk partition 44 for press-fitting as suggested by **BULLINGER**.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the beveled edges for the edges of **NOREM** in order to more easily insert disks for press-fitting as taught by **BULLINGER**.

Regarding Claim 19:

BULLINGER discloses that is known in the art to provide a shoulder 46 for an inner surface of the wall of a sample container in order to receive and support a cover (Col. 4, Lines 49-52).

BULLINGER is evidence that ordinary workers in the field of sample holder making would recognize the benefit of providing a shoulder 46 for an inner surface of the wall of the sample container disclosed by **NOREM** in order to

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a shoulder in the inner surface of the wall of the sample container of **NOREM** in order to receive and support a cover as taught by BULLINGER.

Allowable Subject Matter

8. Claims 1-12 are allowed.
9. Claims 16 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. Claims 26-30 are allowable but are objected to for the formalities described above in Paragraph 2.
11. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

The following is a statement of reasons for the indication of allowable subject matter:

Claims 1 and 26 are allowable because the prior art of record fails to teach or fairly suggest a holder for materials for use in a measuring instrument or a method for fabricating a holder for materials for use in a measuring instrument including an intermediate housing member comprising

a generally horizontal member;

an upper wall extending upwardly from an upper surface of the generally horizontal member, the upper wall defining a first recess adjacent the upper surface having a first diameter and a second recess adjacent the first recess having a second diameter, the second diameter being greater than the first diameter; and

an upper housing member comprising a generally horizontal member and a wall extending upwardly from an upper surface of the generally horizontal member the upper housing member being seated within the second recess of the intermediate housing member;

as defined in the claims, in combination with the other limitations, each arranged and functioning as recited in Claims 1 and 26. Claims 2-12 and 27-30 are allowable by virtue of their dependency upon the respective of claims 1 and 26.

Regarding Claims 16 and 21: NOREM discloses the lower housing member is electron-beam welded (Col. 2, Lines 36-42) to a post assembly (16, 56), but NOREM does not disclose the holder wherein the intermediate housing member and the upper

housing member are electron-beam welded together and wherein the intermediate housing member and the lower housing member are electron-beam welded together.

The prior art teaches away from electron-beam welded together the parts as claimed by Applicant for at least two reasons: (1) NOREM discloses that these parts are held together by “sandwiching”, only welding the outer portions. Even if one considered welding the parts as claimed by Applicant, each of the parts to be welded must be in intimate contact, but each of these parts, as disclosed by NOREM, are horizontally oriented planar discs (Fig. 2) separated by layers of alumina, making it impossible to weld these parts without further structural modifications.

(2) BULLINGER recognizes the criticality of the dimensions of these parts and recognizes that the disc parts change their dimensions (e.g., shrink) when they are electron beam welded together.

The prior art of record does not disclose or fairly suggest the limitations of Claims 16 and 21 as Claimed by Applicant as described above.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in a form PTO-892 and not mentioned above disclose related devices and methods.

- **HENTZE** (U.S. Patent No. 4,368,991) discloses related structures in a sample holder, in particular, cylinders 6, 7 having a lower groove 14 which could hold a temperature sensor and including an upper cup portion.
- **THOMANN** (U.S. Patent No. 4,178,800) discloses a heat source 7 may be embedded in a separate chamber 8 of vessel for holding samples.
- The other reference disclose (less pertinent) related structures.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stanley J. Pruchnic, Jr., whose telephone number is **(571) 272-2248**. The examiner can normally be reached on weekdays (Monday through Friday) from 7:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. F. Gutierrez can be reached at **(571) 272-2245**.

The **Official FAX** number for Technology Center 2800 is **(703) 872-9306** for all official communications.

Any inquiry of a general nature or relating to the status of this application or proceeding may be directed to the official USPTO website at <http://www.uspto.gov> or you may call the **USPTO Call Center** at **800-786-9199** or 703-308-4357. The Technology Center 2800 Customer Service FAX phone number is (703) 872-9317.

The cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site (www.uspto.gov), from the Office of Public Records and from commercial sources.

Private PAIR provides external customers Internet-based access to patent application status and history information as well as the ability to view the scanned images of each customer's own application file folder(s).

For inquiries relating to Patent e-business products and service applications, you may call the **Patent Electronic Business Center (EBC)** at **703-305-3028** or toll free at **866-217-9197** between the hours of **6 a.m. and midnight Monday through Friday EST**, or by e-mail at: ebc@uspto.gov. Additional information is available on the Patent EBC Web site at: <http://www.uspto.gov/ebc/index.html>.



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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

SJG

Stanley J. Pruchnic, Jr.
6/7/04